

REMARKS

This Amendment is responsive to the Official Action mailed March 8, 2004. Entry of this Amendment and reconsideration of the subject application in view thereof are respectfully request.

Claims

Claims 10, 11 and 14-27 were pending. Claims 10, 11 and 14-19 stand rejected. Claims 20-27 were objected to for depending on a rejected base claim, but were otherwise deemed free of the prior art. Previously cancelled claims 1-9, 12 and 13 were also rejected but Applicants believe this to have been in error. Applicants hereby authorize the Commissioner to charge any additional claim fees required by entry of this Amendment to Deposit Account No. 04-0480.

Claims 10, 11 and 21 have been amended to more clearly recite the present invention. Claims 28-39 have been added to more clearly recite the present invention. Thus, claims 10, 11 and 14-39 are pending. Support for this amendment is provided in detail below. Thus, no new matter is added.

Claim Rejections under 35 U.S.C. §112, Second Paragraph

Claims 20 and 21 were rejected as under 35 U.S.C. §112(2) as allegedly being indefinite. In particular, claim 20 was rejected for allegedly lacking antecedent basis in reciting "the formulation according to claim 10, wherein said combination comprises oil of fennel..."

Claim 10 has been amended to relate to only one of the two previous combinations. Accordingly, "oil of fennel" in claims 20 and 21 have clear antecedent basis and the objection is now moot. Withdrawal of rejection is respectfully requested.

Claim Rejections under 35 U.S.C. §102(b)

Claims 10-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Talwar et al. (U.S. Patent No. 4,945,087). In particular, the Examiner alleged that Talwar discloses a composition comprising thymol, a sugar alcohol, anethole and benzoic acid wherein anethole and benzoic acid were present at about 0.01 to about 0.035% and about 0.05 to about 0.25%.

Applicants assert that the claims have been amended to remove reference to "trans-anethole." Talwar et al. does not Talwar et al does not disclose a composition comprising the combination as defined in amended claim 10. Claim 10 requires that the formulation comprises oil of fennel or oil of basil or at least one active ingredient thereof together with at least one of the group comprising paraben, ethylparaben, propylparaben or butylparaben. Talwar et al does not describe any combination of oil of fennel, oil of basil, or active ingredients thereof combined with paraben. Accordingly, it is believed that the Examiner's objections to claims 10 - 17 are overcome.

Moreover, new claims 28 - 39 are believed to be novel and non-obvious over Talwar et al. As described, new claim 28 relates to a combination of oil of fennel or an active ingredient thereof together with benzoic acid wherein said active ingredient is limited to fenchone or estragole. Talwar et al merely relates to compositions comprising anethole and

gives no teaching or suggestion of the antimicrobial benefits of a combination comprising fenchone or estragole with benzoic acid. Accordingly, withdrawal of rejection and allowance of claims are respectfully requested.

Claim Rejections under 35 U.S.C. §103(a)

Claims 1 - 19 were rejected as being unpatentable over Talwar et al under 35 USC 103 (a). In particular, the Examiner conceded that Talwar et al. does not specifically teach a composition as a "spray formulation." However, the Examiner interpreted that the term, "spray formulation" to include any form that can be sprayed, including liquid forms.

It is believed that the amendments to claim 10 and the limitations of new claim 28, which makes no reference to anethole, renders this objection moot. Talwar et al provides no teaching or suggestion of the composition defined in amended claim 10 or new claim 28 or indeed of the advantageous anti-microbial properties associated with such compositions as taught by the present application. Accordingly, it is believed that all claim are non-obvious.

Reconsideration of the Examiner's rejections is respectfully requested.

FEE DEFICIENCY

☒ If an extension of time is deemed required for consideration of this paper, please consider this paper to comprise a petition for such an extension of time; The Commissioner is hereby authorized to charge the fee for any such extension to Deposit Account No. 04-0480.

and/or

☒ If any additional fee is required for consideration of this paper, please charge Account No. 04-0480.

Closing Remarks

Serial No.: 09/486,239

Group Art Unit: 1651

Applicants thank the Examiner for her statement that claims 20-27 are free of the prior art. Applicants believe this response to be a full and complete response to the March 8, 2004 Office Action. Accordingly, favorable reconsideration in view of this response and allowance of the pending claims are earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teresa O. Bittenbender", written over a horizontal line.

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